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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/603,250	06/25/2003	John T. Ulman	PPC-5006	3681
27777	7590	06/24/2005	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			BOGART, MICHAEL G	
			ART UNIT	PAPER NUMBER
			3761	
DATE MAILED: 06/24/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/603,250

Applicant(s)

ULMAN, JOHN T.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 June 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 07 December 2004.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Specification

Claim 1 is objected to because of the following informalities:

In line 14, after "portion", insert --of--.

Claim 5 recites the limitation "the anterior notch boundary " in line 1. There is insufficient antecedent basis for this limitation in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 11 and 14 are rejected under 35 U.S.C. § 102(b) as being anticipated by Brisebois (US 5,718,699 A).

Regarding claim 1, Brisebois teaches a sanitary napkin (10) comprising:

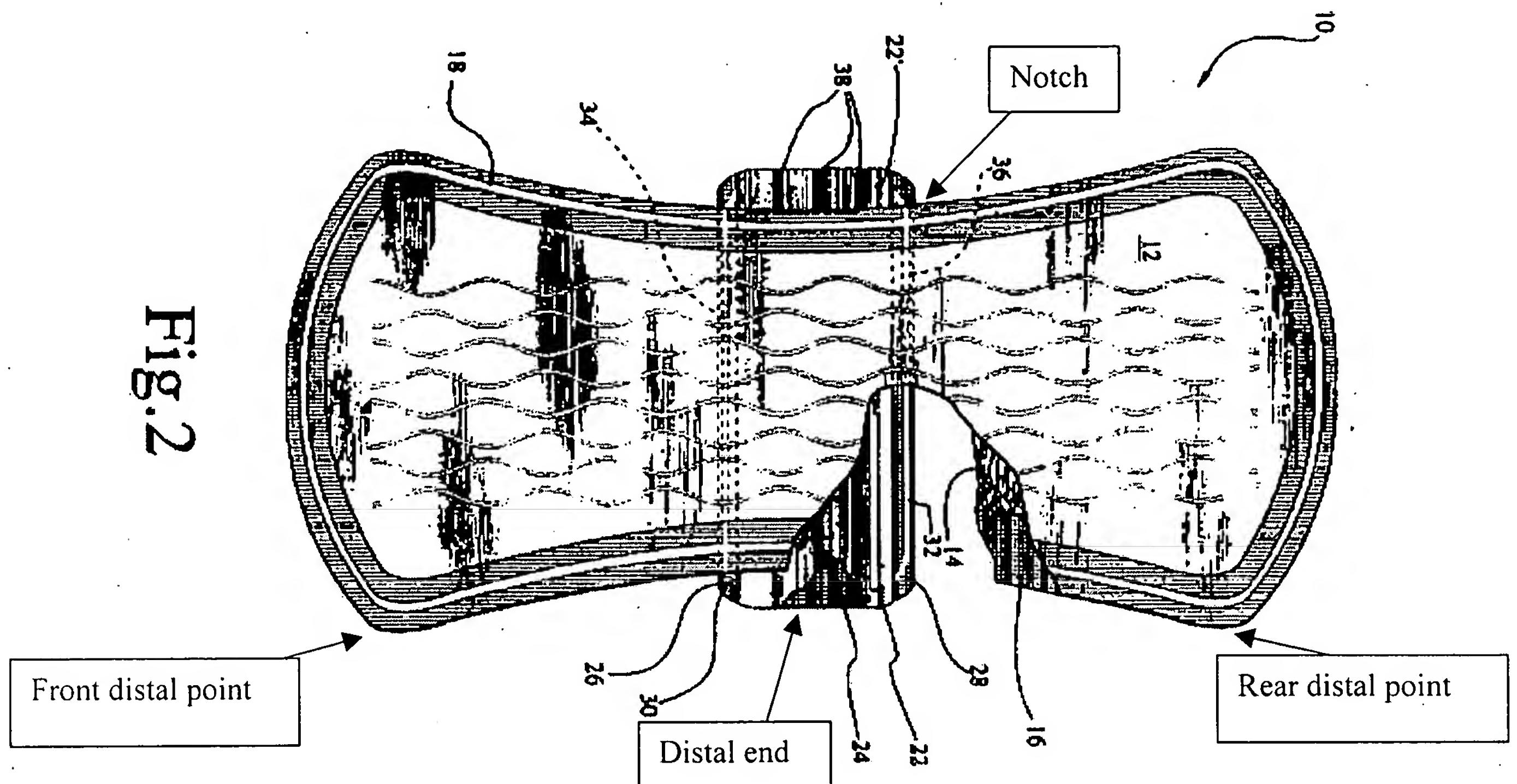
a main body (12, 14, 16), the main body (12, 14, 16) comprising a fluid-permeable cover layer (12), a liquid-impervious barrier layer (16) and an absorbent system (14) intermediate the

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cover layer (12) and the barrier layer (16), wherein the main body (12, 14, 16) comprises a front portion, a rear portion and a center portion intermediate the front portion and the rear portion, and wherein the front portion extends laterally to at least one outermost front distal point and the rear portion extends laterally outward to at least one outermost rear distal point; and

a side flap (22) projecting laterally outward from the absorbent system (14), extending laterally outward from a proximal edge (18) of the center portion and adapted to be folded over a crotch portion of a user's undergarment in use, the side flap (22) extending laterally outward from the proximal edge (18) to a distal end, wherein the distal end is not substantially laterally outward from the at least one outermost front distal point and the distal end is not substantially laterally outward from the at least one outermost rear distal point, and wherein the at least one outermost front distal point, the at least one outermost rear distal point, and the side flap (22) are each positioned on a single side of a longitudinally extending center line of the sanitary napkin (10)(col. 5, line 63-col. 6, line 33)(see figure 2, below).

Regarding claim 2, Brisebois teaches that one or more outermost distal points of the flap (22') have a distance from the longitudinally extending centerline that is less than a distance between the one or more outermost front distal points and the longitudinally-extending centerline, and wherein the one or more outermost distal points of the flap (22) have a distance from the longitudinally-extending centerline that is less than a distance between the outermost rear distal points and the longitudinally-extending centerline.



Regarding claims 3 and 8, Brisebois teaches that the flap (22) is, at least in part, structurally isolated from the front portion by an anterior notch, and the flap (22) is, at least in part, structurally isolated from the rear portion by a posterior notch. The asymmetric notches are defined as the more acute than 90° angle of the intersection between narrow bands (26, 28) and proximal edge (18).

Regarding claim 4, Brisebois teaches that the side flap (22) projects outward to at least one outermost distal point of the flap (22), and wherein the sanitary napkin (10) further comprises an anterior notch defined by an anterior notch boundary that extends continuously from the at least one outermost front distal points to the at least one outermost distal points of the flap (22), and wherein the at least one outermost distal

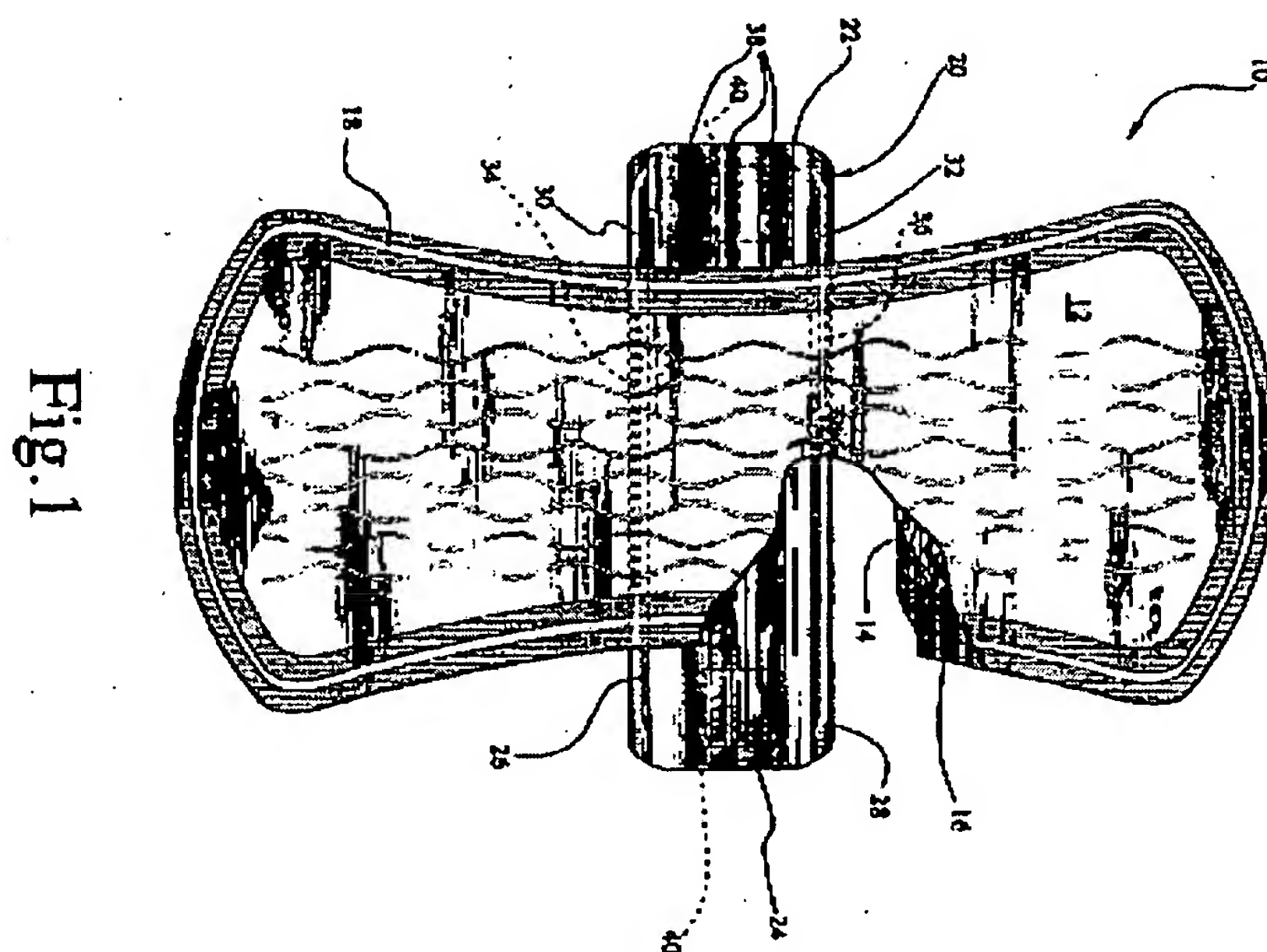
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points of the flap (22) are located on the single side of the longitudinally-extending centerline.

Regarding claim 5, Brisebois teaches that the anterior notch boundary includes portions that are laterally inward from the outermost front distal point (figure 2).

Regarding claim 6, Brisebois teaches that the flap (22) is free of positioning adhesive (figures 2 and 3).

Regarding claim 7, Brisebois teaches a flap positioning adhesive (40) is on the bottom surface of the liquid impervious barrier layer (16)(figure 1, below).



Regarding claim 11, Brisebois teaches a cover layer (12) and barrier layer (16) which each extend homogeneously across the proximal edge (18) from the main body (12, 14, 16) to the flap (22).

Regarding claim 14, Brisebois teaches a sanitary napkin comprising:

a main body (12, 14, 16), the main body comprising a fluid-permeable cover layer (12), a liquid-impervious barrier layer (16) and an absorbent system (14) intermediate the cover layer (12) and the barrier layer (16), wherein the main body comprises a front portion, a rear portion and a center portion intermediate the front portion and the rear portion, and wherein the front portion extends laterally to at least one outermost front distal point and the rear portion extends laterally outward to at least one outermost rear distal point; and

a side flap (22) projecting laterally outward from the absorbent system and laterally outward from a proximal edge of the center portion and adapted to be folded over a crotch portion a user's undergarment, wherein the side flap (22) extends laterally outward from the proximal edge to an outermost distal point of the flap,

wherein the outermost distal point of the flap (22) is not laterally outward from the at least one outermost front distal point and the outermost distal point of the flap (22) is not laterally outward from the at least one outermost rear distal point, and wherein the at least one outermost front distal point, the at least one outermost rear distal point, and the side flap are each positioned on a single side of a longitudinally extending centerline of the sanitary napkin, and wherein the flap (22) is, at least in part, structurally isolated from the front part by an anterior notch, and the flap (22) is, at least in part, structurally isolated from the rear portion by a posterior notch (figure 2).

Claims 1 and 12 are rejected under 35 U.S.C. § 102(e) as being anticipated by Brisebois (US 2002/0143311 A1)(hereinafter: '311).

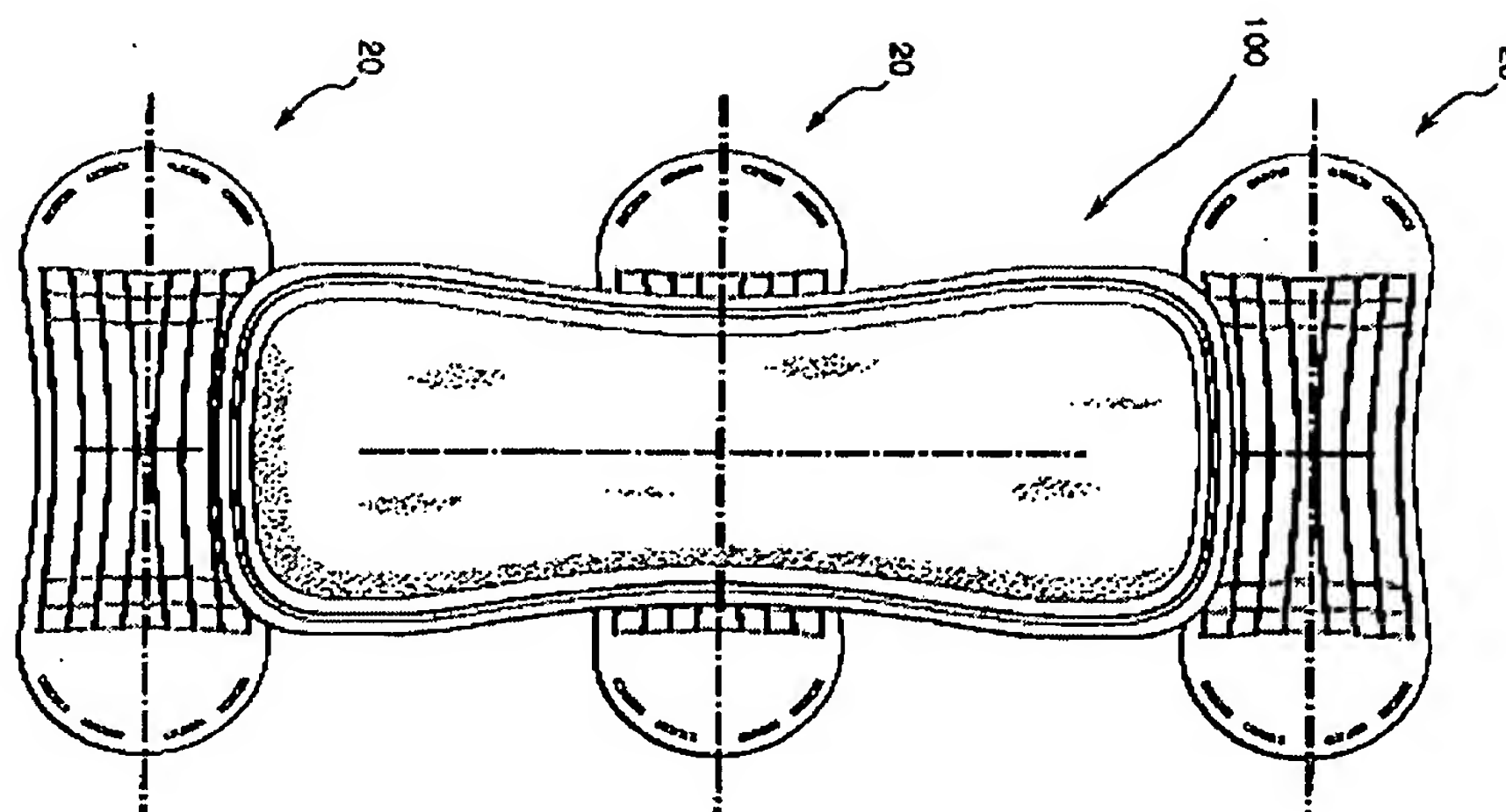
Regarding claim 1, '311 teaches a sanitary napkin (20) comprising:

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a main body (22), the main body (22) comprising a fluid-permeable cover layer, a liquid-impervious barrier layer (41) and an absorbent system (40) intermediate the cover layer and the barrier layer (41), wherein the main body (22) comprises a front portion, a rear portion and a center portion intermediate the front portion and the rear portion, and wherein the front portion extends laterally to at least one outermost front distal point and the rear portion extends laterally outward to at least one outermost rear distal point; and

a side flap (20) projecting laterally outward from the absorbent system (40), extending laterally outward from a proximal edge (24, 26) of the center portion and adapted to be folded over a crotch portion of a user's undergarment in use, the side flap (20) extending laterally outward from the proximal edge (24, 26) to a distal end, wherein the distal end is not substantially laterally outward from the at least one outermost front distal point and the distal end is not substantially laterally outward from the at least one outermost rear distal point, and wherein the at least one outermost front distal point, the at least one outermost rear distal point, and the side flap (20) are each positioned on a single side of a longitudinally extending center line of the sanitary napkin (20)(see figure 6, below).

Regarding claim 12, '311, teaches a somewhat resilient member (124).



Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Brisebois (US 5,718,699 A).

Brisebois does not provide specific dimensions for the notch depth or span.

Mere modification of the size of something in the prior art is not sufficient to patentably distinguish a claimed invention from the prior art.

In Gardner v. TEC Systems, Inc., 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), cert. denied, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only

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difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

In the instant case, the claimed dimensions do not appear to be critical, nor is there an unexpected result shown from these specific dimensions.

Allowable Subject Matter

Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Larry Schwartz may be reached at phone number (571) 272-4390. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

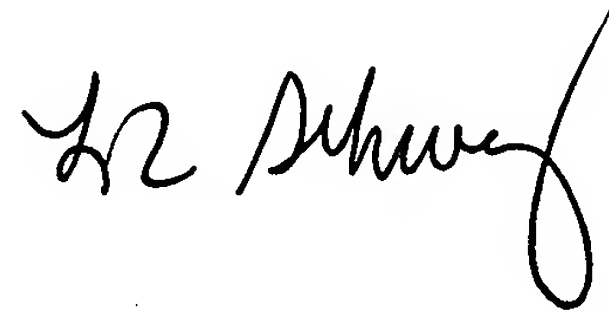
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
20 June 2005



Larry I. Schwartz
Supervisory Patent Examiner
Group 3700